

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF MISSISSIPPI  
EASTERN DIVISION

CHARLES BEAM, #09413

PETITIONER

V.

CIVIL ACTION NO.1:05CV6-WAP-JAD

CHARLES TILLERY, ET AL

RESPONDENTS

REPORT AND RECOMMENDATION

The respondents have moved to dismiss this petition for habeas corpus based upon the failure to exhaust state remedies (Doc. 19). Charles Beam or Bean entered a guilty plea to one count of the sale of cocaine and one count of grand larceny on July 15, 2004. On August 1, 2004, he filed a motion to withdraw his guilty plea. On October 11, 2004, he filed a petition to reduce his sentence. These motions were denied by orders on October 13, 2004, and October 14, 2004. He filed a notice of appeal on November 17, 2004. He was granted leave to appeal on April 11, 2005. The direct appeal is pending.

This petition is premature and the undersigned recommends that it be dismissed without prejudice.

The parties are referred to 28 U.S.C. 636(b)(1) and Local Rule 72.2(D) for the appropriate procedure in the event any party desires to file objections to these findings and recommendations. Objections are required to be in writing and must be filed within ten days of this date. Failure to file written objections to the proposed finding and recommendations contained in this report within ten days from the date of filing will bar an aggrieved party from challenging on appeal both the proposed factual findings and the proposed legal conclusions accepted by the district court *Douglass v. United Services Automobile Association*, 79 F.3d 1415 (5th Cir. 1996).

Petitioner is directed to acknowledge receipt of this report and recommendation by signing the enclosed acknowledgment form and returning it to the court within ten days of this date. Petitioner is warned that failure to comply with the requirements of this paragraph may lead to the dismissal of this lawsuit under F.R.Civ.P. 41(b) for failure to prosecute and for failure to comply with an order of the court.

This the 2nd day of November, 2005.

/s/ JERRY A. DAVIS  
UNITED STATES MAGISTRATE JUDGE